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Copyright Royalty Board

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Copyright Royalty Board

In the Matter of)	
)	
Distribution of 2000, 2001, 2002)	Docket No. 2008-2 CRB CD 2000-2003
and 2003 Cable Royalty Funds)	(Phase II)
)	
Distribution of the)	
1998 and 1999 Cable Royalty)	Docket No. 2008-1
Funds)	CRB CD 98-99 (Phase 2)
)	
Distribution of)	Docket No. 2012-6 CRB CD 2004-2009
2004-2009)	(Phase 2)
Cable Royalty Funds)	
)	
Distribution of)	Docket No. 2012-7 CRB SD 1999-2009
1999-2009)	(Phase 2)
Satellite Royalty Funds)	

**INDEPENDENT PRODUCERS GROUP'S MOTION FOR PARTIAL
DISTRIBUTION OF 2000, 2001, 2002 AND 2003 CABLE ROYALTIES
ALLOCATED TO THE PROGRAM SUPPLIERS CATEGORY AND
DEVOTIONAL PROGRAMMING CATEGORY, OR ALTERNATIVELY,
PARTIAL DISTRIBUTION OF 1999-2009 CABLE ROYALTIES
AND 1999-2009 SATELLITE ROYALTIES**

Worldwide Subsidy Group LLC (a Texas limited liability company) dba
Independent Producers Group ("IPG") hereby submits its "Motion for Partial Distribution
of 2000, 2001, 2002 and 2003 Cable Royalties Allocated to the Program Suppliers
Category and Devotional Programming Category, or Alternatively, Partial Distribution of
1999-2009 Cable Royalties and 1999-2009 Satellite Royalties".

On August 13, 2013, the Judges issued their "Final Determination of Distributions
Phase II" in this proceeding. On October 30, 2013, such determination was published in
the Federal Register. According to the Judges' Final Determination, IPG was awarded

the following royalties for the following calendar years, in the Program Suppliers and Devotional Programming categories:

Program Suppliers

2000 -- 1.16%
2001 -- 0.31%
2002 -- 0.36%
2003 -- 0.23%

Devotional Programming

2000 -- 37.14%
2001 -- 39.08%
2002 -- 41.02%
2003 -- 39.08%

Applied against the royalties allocable to the Program Suppliers and Devotional Programming categories, IPG would be entitled in excess of \$3,500,000.¹ By this motion, IPG seeks a partial distribution in the amount of \$1,100,000.

A. The Copyright Royalty Judges have Authority to Order Precontroversy Partial Distributions.

Section 111 of the Copyright Act favors the early distribution of cable royalties. See 17 U.S.C. Section 111(d)(4)(B). Chapter 8 of the Copyright Act vests the Judges with statutory authority to order the precontroversy distribution of cable royalties. In the Copyright Royalty Judges Program Technical Corrections Act, Congress amended Section 801(b)(3)(C) to clarify that a partial distribution of royalties could be made at any time after the filing of claims. Pub. L. No. 109-303 Sections 3, 5, 109th Cong., 2nd Sess.

¹ IPG's calculation is based on the amounts that were allocated pursuant to confidential settlement in the Program Suppliers and Devotional Programming categories. Pursuant to the Judges' Order of July 20, 2012, the Motion Picture Association of America, and the Settling Devotional Claimants informed IPG of such amounts. Notwithstanding, the reported amounts were based on the Copyright Office's initial receipt of 2000-2003 cable royalties, which occurred between 2000 and 2005, i.e., with no attribution of interest growth. As such, the reported amounts stand as a minimum allocation to the Program Suppliers and Devotional Programming categories.

(2006), 120 Stat. 1478. Congress reaffirmed the Judges' authority to partially distribute statutory royalties in advance of the declaration of a controversy. Section 801(b)(3)(C) provides:

Notwithstanding section 804(b)(8), the Copyright Royalty Judges, at any time after the filing of claims under section 111 . . . may, upon motion of one or more of the claimants and after publication in the Federal Register of a request for responses to the motion from interested claimants, make a partial distribution of such fees, if, based upon all responses received during the 30-day period beginning on the date of such publication, the Copyright Royalty Judges conclude that no claimant entitled to receive such fees has stated a reasonable objection to the partial distribution, and all such claimants –

- (i) Agree to the partial distribution;
- (ii) Sign an agreement obligating them to return any excess amounts to the extent necessary to comply with the final determination on the distribution of the fees made under subparagraph (B);
- (iii) File the agreement with the Copyright Royalty Judges; and
- (iv) Agree that such funds are available for distribution.

17 U.S.C. Section 801(b)(3)(C).

B. IPG's Motion Occurs in a Context that is Fundamentally Different than Existed at the time of IPG's Prior Motion for Partial Distribution; No Reasonable Objection Exists to the Proposed Partial Distribution.

IPG previously moved for a distribution of cable royalties, and such motion was denied pursuant to the Judges' Order of January 17, 2012.² As such Order reflects,

² In such Order, the Judges noted that because all of the potential participants in the 2000-2003 Phase II cable proceedings had been served, there was no need for the Judges to publish IPG's motion in the Federal Register. See *In the Matter of 2000, 2001, 2002 and 2003 Cable Royalty Funds*, Docket No. 2008-2 CRB CD 2000-2003 (Phase II) (January 17, 2012), at fn. 1. No differently, because all parties with standing in any of

absent all claimants agreeing to a proposed partial distribution, the Judges are charged with determining the reasonableness of any objection to a proposed partial distribution. At such time, the Judges determined that a reasonable objection had been made to the partial distribution to IPG of 2000-2003 cable royalties. The Judges' Order was issued, however, prior to the exchange of discovery in the 2000-2003 proceedings, prior to any hearings addressing the validity of IPG-represented claims, prior to the direct and rebuttal proceedings therein, and prior to the Judges' determination of IPG's entitlement to 2000-2003 cable royalties.

While the Judges' determination in the 2000-2003 Phase II proceedings are not "final" because appeals thereof are pending, no reasonable objection can be sustained to the proposed partial distribution. The requested partial distribution does not exceed the amount separately awarded to IPG in *either* the Program Suppliers or Devotional Programming categories. (The proposed partial distribution equals 43% of the amount actually awarded to IPG for the Devotional Programming category pursuant to the Final Distribution order, i.e., following the direct and rebuttal proceedings, and 31% of the amount collectively awarded to IPG for the Devotional Programming and Program Suppliers categories pursuant to the Final Distribution order.)

More significantly, the proposed partial distribution would be only slightly more than half of the amount that the Settling Devotional Claimants ("SDC") argued IPG should receive *solely* from the Devotional Programming category, and only 36% of what the SDC and the MPAA collectively argued IPG should receive from the Devotional

the relevant proceedings have been served by IPG, no need exists for publication of IPG's motion in the Federal Register prior to consideration by the Judges.

Programming and Program Suppliers categories.³ Consequently, even if IPG were to receive only such amounts as its adversaries asserted it should be entitled, the proposed partial distribution would be significantly less than the least amount that IPG could ever expect to eventually receive.

IPG agrees to sign the separate agreement contemplated in Section 801(b)(3)(C)(ii) obligating it to return any excess royalty amounts received, in a form to be provided by the Office or the Copyright Royalty Judges, in advance of the requested distribution, and agrees to file such an agreement with the Copyright Royalty Judges or as otherwise directed.

C. The Judges have previously distributed royalties in advance of a final determination, subject to a competing claimant's objection of non-finality.

Although the 2000-2003 cable proceedings are currently under appeal, such fact is not a basis for rejecting IPG's motion. The lack of finality to a proceeding has not precluded the Judges from previously ordering comprehensive distributions, despite the express challenge to such distributions by other claimants. Specifically, by Order of May 23, 2013, in the 2000-2003 cable proceedings (Phase II), the Joint Sports Claimants ("JSC") sought distribution of one-hundred percent (100%) of amounts allocable to the Sports Programming category for the 2002 and 2003 cable pools. IPG objected to such distribution, articulating its intention to appeal those CRB determinations deeming IPG's claims to such royalty pools and program category either invalid or miscategorized.

The Judges nevertheless granted the JSC's motion, and distributed to the JSC one-hundred percent (100%) of the amounts allocable to the sports programming category for

³ See SDC Amended Rebuttal Statement, amended testimony of William Brown, filed May 23, 2013, at p.15. See *additionally*, MPAA Rebuttal Statement, testimony of Jeffrey Gray, filed May 15, 2013, at p. 26.

2002 and 2003, leaving no amount in reserve. The Judges' determinations that IPG's claims to such pools were either invalid or miscategorized were not final at the time of the Judges' Order, and could not have become final until publication of the Judges' "Final Determination" in the Federal Register, coupled with either a failure of IPG to appeal the determination within the thirty (30) days thereafter, or a determination on appeal, neither of which was possible as of the date of the Order. *See* 17 U.S.C. Section 803(d)(1). IPG has, in fact, appealed the Judges' determinations regarding IPG's sports category claims.

While no discussion of the issue appears in the May 23, 2013 Order, the timing and circumstances of the Judges' Order makes clear that the potential for predicate determinations being appealed did not stand as a bar to the Judges' decision to make a comprehensive, much less partial, distribution of royalties for a particular royalty pool. Consequently, the lack of finality of the Judges' "Final Determination" relating to the 2000-2003 cable royalty pools for the Devotional and Program Suppliers categories cannot stand as a bar to the partial distribution of royalties allocable thereto.

D. Alternatively, the Judges can Order the Partial Distribution to be recouped from all proceedings in which IPG is currently a participant.

Alternatively, and in order to further placate any objection as to the proposed partial distribution, IPG moves that the Judges approve the partial distribution subject to recoupment of such amount from all proceedings in which IPG is currently a participant.

According to the Judges' Order of January 17, 2012, "partial distributions are primarily based upon distribution percentages established in a prior proceeding," and the "use of prior percentages is appropriate because it can be generally assumed that the value of a claim is unlikely to vary considerably from one proceeding to the next." *See*

Order of January 17, 2012, at pp. 2-3, *citing* Order in Docket No. 2001-8 CARP CD 98-99 (April 10, 2002).

IPG's represented claimants in the Devotional Programming category remain unchanged for 2004-prospectively, with the exception of one minor claimant. Accepting the logic of the Judges' Order of January 17, 2012, and the Librarian's Order of April 10, 2002, IPG's claims in the remaining proceedings should be assumed to not vary considerably.

As noted above, the "Final Determination" of the Judges in the 2000-2003 cable proceedings was that IPG receive amounts averaging 39% of the Devotional Programming pools, while the SDC argued that IPG should receive amounts averaging 32.45% of the Devotional Programming pools. The proposed partial distribution, however, constitutes only 1.5% of the amounts allocable to the Devotional Programming category for those proceedings in which IPG is currently a participant. Consequently, it is highly unlikely that the proposed partial distribution could not be sufficiently recouped from the amounts IPG expects to realize therefrom.

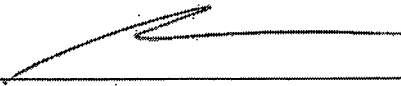
CONCLUSION

For the foregoing reasons, IPG moves that the Judges order a partial distribution to IPG in the amount of \$1,100,000, to be recouped from any final award to IPG in the 2000-2003 cable proceedings. Alternatively, IPG would request that such partial distribution be ordered recouped against all other proceedings in which IPG is currently a

participant, i.e., 1999 cable proceeding, 2004-2009 cable proceeding, and the 1999-2009 satellite proceeding.

Respectfully submitted,

Dated: November 27, 2013



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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of November, 2013, a copy of the foregoing was sent by overnight mail to the parties listed on the attached Service List.



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